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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
USA COMMERCIAL MORTGAGE COMPANY,

Debtor.

In re:
USA CAPITAL REALTY ADVISORS, LLC,

Debtor.

In re:
USA CAPITAL DIVERSIFIED TRUST DEED FUND,
LLC,

Debtor.

In re:
USA CAPITAL FIRST TRUST DEED FUND, LLC,

Debtor.

In re:
USA SECURITIES, LLC,

Debtor.

Affects:
☒ All Debtors
☐ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case Nos.:
BK-S-06-10725-LBR
BK-S-06-10726-LBR
BK-S-06-10727-LBR
BK-S-06-10728-LBR
BK-S-06-10729-LBR

JOINTLY ADMINISTERED
Chapter 11 Cases

Judge Linda B. Riegle

**NOTICE OF APPLICATION TO
COMPROMISE AND SETTLE
CONTROVERSIES WITH
PIERCY, BOWLER, TAYLOR &
KERN, PC**

Hearing Date: November 18, 2008
Hearing Time: 9:30 a.m.

**NOTICE OF APPLICATION TO COMPROMISE AND SETTLE
CONTROVERSIES WITH PIERCY, BOWLER, TAYLOR & KERN, PC**

TO: DEBTORS, ALL CREDITORS, AND OTHER PARTIES IN INTEREST

PLEASE TAKE NOTICE that on or about October 20, 2008, Geoffrey Berman (the “Trustee”), Trustee of the USACM Liquidating Trust (the “USACM Trust”) and Michael Tucker

1 (the “Manager”), Manager of the USA Capital Diversified Trust Deed Fund, LLC (“DTDF”) will
2 file an *Application to Compromise and Settle Controversies with Piercy, Bowler, Taylor & Kern*
3 *PC* (the “Motion”) and move the Court for: (a) an order pursuant to Federal Rule of Bankruptcy
4 Procedure 9019 (“Rule 9019”) approving the *Settlement Agreement, Mutual Release, and*
5 *Covenants* (the “Settlement Agreement”) between the USACM Trust, DTDF, and Piercy,
6 Bowler, Taylor & Kern, PC (“PBTk”) (collectively, the “Parties”), the former auditor of USA
7 Commercial Mortgage Company (“USACM”); and (b) an order pursuant to Nevada Revised
8 Statute § 17.225, et seq. barring claims against PBTk for indemnity and/or contribution.

9 As set forth in the Motion, the Trustee and the Manager seek authority to settle claims
10 arising from a dispute with PBTk. The Parties have entered into an agreement to settle the
11 USACM Trust and DTDF’s claims pursuant to which PBTk will pay to the USACM Trust a
12 confidential settlement amount (the “Settlement Amount”). Consistent with the agreement
13 between the USACM Trust and DTDF, DTDF will share in the settlement as a beneficiary of the
14 USACM Trust and as otherwise described in the agreement between the USACM Trust and
15 DTDF dated and filed with the Court on March 13, 2008. Payment of the Settlement Amount is
16 contingent upon the Court’s approval of the Settlement Agreement under Rule 9019 and entry of
17 a Bar Order under Nevada Revised Statutes § 17.225, et seq. Effective upon payment of the
18 Settlement Amount, the Parties will exchange full mutual releases. The Parties believe the
19 proposed settlement is fair and reasonable and in the best interests of the beneficiaries of the
20 USACM Trust and DTDF.

21 The Settlement Agreement and its terms are considered confidential by the Parties. If
22 you require a copy of the Settlement Agreement to determine whether or not to object to the
23 Motion, you may obtain a copy by providing a written request to the Debtors’ Counsel and

1 PBTk at the address set forth below. Prior to receiving a copy, you must agree, in writing, to
2 maintain the confidentiality of the Settlement Agreement.

3 A copy of this notice was served either electronically or via first class mail: (a) all
4 creditors, equity holders, and other parties in interest in the USA Capital Bankruptcy Case listed
5 on the master mailing list associated with the case; (b) all existing and prospective defendants to
6 any suits brought or to be brought by the USACM Trust and/or DTDF; and (c) all Direct Lenders
7 (as defined in the Plan).

8 Objections, if any, to the proposed settlement described in the Motion must be filed ***no***
9 ***later than 15 days*** after the date of this Notice with the Clerk of the United States Bankruptcy
10 Court, 300 Las Vegas Boulevard South, Las Vegas, Nevada 89101, with a copy to be served
11 concurrently upon both the Debtors' counsel and PBTk's counsel at the address set forth below.
12 If the hearing date has been set on less than 15 days' notice, then the opposition must be filed
13 and served ***no later than 5 business days*** before the hearing. The opposition must state your
14 position, set forth all relevant facts and legal authority, and be supported by affidavits or
15 declarations that conform to Local Rule 9014(c).

16 If you object to the relief requested in the Motion, you ***must*** file a **WRITTEN** response
17 to the Motion with the Court. You ***must*** also serve your written response on the person who sent
18 you this notice.

19 If you do not file a written response with the Court, or if you do not serve your written
20 response on the person who sent you this notice, then:

- 21 • The Court may *refuse to allow you to speak* at the scheduled hearing; and
- 22 • The Court may *rule against you* without formally calling the matter at the hearing.

1 **NOTICE IS FURTHER GIVEN** that a hearing will be held to consider the Motion and
2 objections, if any, on **Tuesday, November 18, 2008, at 9:30 a.m** before the Honorable Linda B.
3 Riegle, United States Bankruptcy Judge in Courtroom 1 at 300 Las Vegas Boulevard South, Las
4 Vegas, Nevada 89101, at which time you may, but need not appear. If no objections to the
5 Motion are made, the Court may enter its order authorizing the Parties to enter into the
6 settlement without further hearing thereon.

7 Dated: October 20, 2008

8 /S/ GEOFFREY BERMAN
9 **GEOFFREY BERMAN, AS THE TRUSTEE**
10 **FOR THE USACM LIQUIDATING TRUST**

/S/ MICHAEL TUCKER
MICHAEL TUCKER, AS THE MANAGER FOR
USA CAPITAL DIVERSIFIED TRUST DEED
FUND, LLC

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